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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6436 OF 2000

Dr. S.G. Joshi ... Petitioner

Vs.

Union of India & Ors. ... Respondents

Mr. S.P. Saxena for the petitioner.

Mr. M.S. Karnik for respondents 1 and 2.

Mr. K.P. Anilkumar for respondent 3.

Mrs. Supriya Khanzode with Mr. Girish Kulkarni i/b Mrs. M.G. Kulkarni for respondent 4.

CORAM: V.G. PALSHIKAR &
SMT. RANJANA DESAI, JJ.

DATED: 1ST SEPTEMBER, 2004.

P.C.:-

1. By this petition, the petitioner, who was a Scientist E-II in the National Chemical Laboratory, Pune, has challenged the order passed by the Central Administrative Tribunal on Original Application No.370 of 2000 filed by the petitioner.

2. By the Original Application, the petitioner had made the following prayers:

> "(a) to direct the Respondent Nos.1 to 3 to release the amount of Rs.1,66,754/- withheld by them from the applicant's leave encashment amount.

(b) to direct the Respondents to pay 12% interest, on the above said amount from the date of the applicant was entitled to get, till the amount actual paid to the applicant.

(c) to award the cost of the application."

3. This application was contested by the respondents and, the Tribunal by the impugned order rejected this application. In paragraph 6 of its order, the Tribunal has considered all the circumstances in which the amount was required to be withheld and found that the refusal of the applicant to refund the misappropriated money amounts to misconduct and, therefore, the respondents had a right to withhold the leave encashment to that extent. The Tribunal has also taken into consideration clause 7 of the sanction order, which requires the petitioner to act in a particular manner and he categorically undertook to refund in case of deviation of the schedule. The Tribunal observed that the petitioner has failed to utilise the money for the purpose for which it was sanctioned. The Tribunal has thus went on to observe that "the applicant, being a responsible officer, should have himself voluntarily refunded the said excess amount of Rs.1,66,754/- but he failed to do so. The money spent by him is not private money, it is public money" and, therefore, the Tribunal found no reason to direct release of money as prayed for in prayer (a) of the original

application.

4. This order of the Tribunal is challenged in the present petition on various grounds mentioned in the petition as also canvassed before us. The prayers as made in the writ petition are as under:

(a) The Hon'ble Court be pleased to issue a writ of certiorary or any other appropriate writ or order or direction in the nature of writ, calling for the records and proceedings of original application No.370 of 2000 from Central Administrative Tribunal, Bombay, and after perusing the same to quash and set aside the impugned order dated 18/10/2000 passed by the CAT, Bombay, in O.A.No.370 of 2000;

(b) To declare that the Respondents action of Respondent No.3 in deducting the amount of Rs.1,66,754/- from the retirement benefit of the Petitioner is illegal and unsustainable in law.

(c) To direct the Respondents to pay the withheld amount of Rs.1,66,754/- to the Petitioner full.

(d) To grant 12% interest on Rs.1,66,754/- from 1/1/1999 till the amount is paid to the Petitioner.

(e) Pending the final disposal of this petition, the Respondents be directed not to remit the amount of Rs.1,66,754/- already deducted from the Petitioner to the office of Respondent No.4.

(f) To grant ad-interim relief in terms of prayer clause (a) above;"

5. While Rule was granted, none of the interim relief (e) or (f) was granted. The operation of the Tribunal's order was not stayed nor was any direction issued to pay to the petitioner the amount of Rs.1,66,754/-, which was withheld by the respondents. The petition was filed in the year 2000 and has come up for hearing today.

6. When the matter was taken up for argument, the learned counsel for respondent 3 submitted that during the pendency of this writ petition, the amount, which was withheld by respondent 3 has been paid over to respondent 4 and, therefore, prayer (a) as made here as also prayer (a) as made before the Central Administrative Tribunal cannot be granted because the amount is no longer withheld. It is already paid over to respondent 4. That being the position, the petitioner has to pray for

appropriate direction for repayment of that money against respondent 4 to whom it has been paid. Such is not the prayer. In such circumstances, in our opinion, the petition is rendered infructuous. Petition is, therefore, disposed of as such.

(V.G. PALSHIKAR, J.)

(SMT. RANJANA DESAI, J.)